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REPORT

50X1-HUM

CD NO. --

COUNTRY China
SUBJECT Political - Judicial, people's courts
HOW PUBLISHED Daily newspaper
WHERE PUBLISHED Hong Kong
DATE PUBLISHED 7 Sep 1951
LANGUAGE Chinese

DATE OF INFORMATION 1951

DATE DIST. 19 Jan 1952

NO. OF PAGES 6

SUPPLEMENT TO REPORT

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SOURCE Ta Kung Pao.

INTERPRETATION OF PROVISIONAL REGULATIONS GOVERNING ORGANIZATION
OF PEOPLE'S COURTS OF THE PEOPLE'S REPUBLIC OF CHINA

Hsu Te-heng, acting chairman of the Commission of Law, Central People's Government, at the 12th session of the Central People's Government Administration Council, 3 September 1951, submitted the draft provisional regulations governing the organization of the people's courts of the People's Republic of China, to the members of the council for approval.

In submitting the regulations, Hsu Te-heng stated that such a legislation is indispensable to the judicial system. In regard to the relation between the people's court and the people, he stated that the regulations are formulated in a spirit of service to the people in accordance with Article 17 of the Common Program. "Such a revolutionary spirit stands in sharp contrast to the reactionary viewpoints of the former Ku-Fa Ch'uan-Shu (Six Basic Law Codes)," he explained. With regard to the relation between the people's court and the people's government on the same level, he contended that it is proper for a people's court to be supervised by its higher court and by the people's government council on its own level.

He also explained the relationship between a people's court and minority nationalities, the organization of people's courts on three levels, the levels of court jurisdiction, the provisions for trial, and the basic characteristics of the court system.

Hsu Te-heng

I am here representing the Commission of Law of the Central People's Government to report to you on the provisional regulations for the organization of people's courts of the People's Republic of China. Such legislation is indispensable to the judicial system.

- 1 -

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As the suppression of counterrevolutionary activity and the land-reform movement have become more intensified, the task of the people's courts has been heavier than ever before. The number of cases handled by the people's courts on various levels has been very great. For instance, in the first half of 1951, in the Northeast the people's courts handled a total of 88,246 cases, of which 51,058 were criminal cases and 37,188 civil cases. In the same period, in the seven large cities of Peiping, Tientsin, Shanghai, Nanking, Wuhan, Canton, and Chungking the people's courts handled a total of 95,983 cases, of which 34,883 cases were criminal cases and 61,100 civil cases. Also during the same period, the people's courts in the Shansi, Chahar, and Shantung provinces, and the North Anhwei and South Kiangsu administrative office districts handled 170,703 cases, 102,641 of which were criminal cases and 68,062 were civil cases. To strengthen the organization of the people's courts in order to improve the functioning of the people's judicial system it becomes necessary to devise these regulations.

The draft of these regulations has resulted from a long period of study and discussion. As early as in the winter of 1948, the Law Committee of the Central Committee of the Chinese Communist Party started preparing the draft on the basis of judicial experiences in the old liberated areas. Since the spring of 1950, the Commission of Law of the Central People's Government has continued to conduct studies and make revisions.

The first draft was based on experiences with cases in North China, Northeast, Northwest China, East China, and South and Central China, as well as on the study of Soviet court organization and other related materials. It was discussed by the First Session of All-China Judicial Conference last year and revised many times in accordance with suggestions made by government agencies on the central and local levels. Further examinations and revision was conducted by the Committee of Political and Legal Affairs of the Government Administration Council of the Central People's Government, and the Standing Committee of the National Committee of the People's Political Consultative Conference of the People's Republic of China. Now, I formally present these regulations for final revision and approval.

Because various works of our country are still in their initial stages and because the War of Liberation has not been ended, it is obviously difficult to have a very definite and rigid system of regulations for the people's courts. Hence, these regulations are temporary and very general. It is expected, however, that these regulations will become more perfect in the future, as we shall make constant revisions out of our growing experience.

I would like to explain briefly some fundamental issues of these regulations.

A. Relation Between the People's Court and the People

These regulations are formulated in a spirit of service to the people on the part of the people's revolutionary government. They are based on Article 17 of the Common Program of the People's Political Consultative Conference, the purpose of which is to "abolish all laws, decrees, and judicial systems of the Kuomintang reactionary government oppressing the people, enact decrees protecting the people, and establish a people's judicial system." Indeed, such a spirit pervades the policy, organization, and legal procedures of the newly devised regulations for a judicial system. Such a revolutionary spirit, a spirit in the interest of the people, stands in sharp contrast to the reactionary viewpoints of the former Liu-Fa Ch'uan-Shu and refutes all laws for the organization of a court system which is prejudicial to the people.

- 2 -

CONFIDENTIAL

CONFIDENTIAL

50X1-HUM

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The basic function of the people's court, as that of the people's army and people's police, is to serve as a state instrument of the People's Republic of China and as an indispensable weapon of the people's democratic dictatorship and the liberated Chinese people. The basic function of the people's court is to inform and to educate the people to obey laws and orders through its trials. It aims to "strengthen the people's democratic dictatorship, preserve the social order of the New Democracy, and protect all lawful rights and interests and the revolutionary achievements of the people." Hence, the people's court stands for the interest of the people against imperialism, feudalism, bureaucratic capitalism, and the remnants of that Kuomintang regime which personified all the reactionary elements. It is opposed to the so-called Liu-Fa Ch'uan-Shu which were designed to protect the interest of the ruling few and the reactionary Kuomintang regime.

From the viewpoint of structure, the people's court is a constituent part of the people's government. On the one hand, it is under the jurisdiction of and responsible to the people's government council on its respective level and the higher people's court to which it submits reports. On the other hand, its work exemplifies its nature as a court by the people, of the people, and for the people. Emphasis was placed upon the lower courts as well as on the higher courts, for the former are better able to see the people's viewpoints. Hence, the government has made provisions for the establishment of a sufficient number of courts in the various areas. (For instance, the municipal people's court will set up ch'u courts, and the provincial people's court and the Supreme People's Court will establish branches or branch judiciary departments in the various districts when necessary. Policies such as these are basically different from the old system of independent administration of the judiciary and life-long appointments to judgeships which were not responsible to the people themselves.

As for the methods of trial, the people's court has adopted a system that is more convenient to the people, in closer contact with them, and gives more weight to their opinion. Hence, trial does not merely rely on testimony and courtroom interrogation, but also on field investigation. Decisions will be reached only after the over-all picture has become clear, and sufficient evidence has been obtained by means of investigation on the scene. This is particularly true for the more complicated cases. Depending on the actual circumstances of the need of each case, the people's court may choose the trial system, of holding trial either in its courtroom or in the locality in which the case arose, or it may invite the people to participate in the trial.

Furthermore, by using various methods the people's court always stresses teaching the people to observe law and order. In other words, judicial education becomes one of the purposes of the new trial system. Such a system is in contradistinction to the former system in which trial administration was kept so far away from the people and so much emphasis was placed on prosecution and punishment.

B. Relation Between the People's Court and the People's Government on the Same Level

Opinions differed as to what should be the nature of the relationship between the people's court and the people's government. Some thought a people's court should be under the supervision of the higher court while others held that it should be under the supervision both of the higher court and the people's government on the same level. After having exchanged opinions with all concerned, we believe that a people's court should be supervised by its higher court and by the people's government council on its own level. Only such a structure is adequate, since it offers the most advantages and the fewest evils.

- 3 -

CONFIDENTIAL

CONFIDENTIAL

50X1-HUM

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The reasons for such jurisdiction are many. The revolutionary government of China has been formed by the consolidation of forces from the local level up to the central. Furthermore, China is a large country; it will take a long time to eliminate the differences in economic and political development in various regions created by imperialism and feudalism in their long tenure.

Finally, there is still some difference in advancement in our work in various areas, and it will take time for us to correct it. The people's courts, including the branches of the Supreme People's Court, must not only be put under the jurisdiction of their higher courts, but also under the jurisdiction of the people's government council on their own level. Only by such a regulation can the Supreme People's Court effectively exercise its authority in accordance with the different circumstances and degree of development in various areas. Therefore, Article 10 of the regulations state that "the people's courts of each level (including branches of the Supreme People's Court and branch judiciary departments) are a constituent part of the people's government of the same levels, and they are subject to the direction and supervision of the people's government councils of the same level."

C. People's Court and Minority Nationalities

China is a country inhabited by peoples of different origin. The minority nationalities have their own peculiar social and economic life, different customs, and languages. We take full consideration of these differences in preparing these regulations. Thus, Article 2 asserts that in autonomous regions of various minority nationalities, people's courts shall be established on a level equal to the local people's government in accordance with existing conditions. Also, Article 11, Paragraph 1, on the organization of the hsien people's court (banner, hsien, similar administrative area, or autonomous area) and Article 18, Paragraph 1, on the organization of the provincial people's court, are regulations that take full cognizance of the special circumstances of minority nationalities and thus are consistent with the policy on minority nationalities as prescribed in the Common Program. Furthermore, Article 9 states that "people of every nationality shall have the right to use their own language for judiciary proceedings; whenever necessary, the people's courts shall interpret for them." The second paragraph of the same article provides that "in the areas where minority nationalities live or where there are mixed nationalities living together, the people's courts shall conduct the judiciary proceedings in the prevailing local language. Whenever necessary, decisions, announcements, and other documents shall, at the same time, be written in the languages of the nationalities concerned." It is quite obvious that one of the special features of these regulations is that they are formulated on the basis of equality and unity among the peoples. This stands in sharp contrast to the reactionary racial policy of the former Kuomintang regime.

D. Organization of the People's Courts

A people's court is an agency for the administration of justice for the People's Republic of China. Article 2 of the Provisional Regulations Governing the Organization of People's Courts states that "the People's Republic of China shall establish people's courts on the following levels:

- "1. Hsien people's courts
- "2. Provincial people's courts
- "3. The Supreme People's Court

"In the autonomous regions of the various minority nationalities, people's courts shall be established on levels corresponding to those of their people's governments in accordance with existing conditions.

- 4 -

CONFIDENTIAL

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50X1-HUM

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"The establishment and organization of the people's special courts shall be separately determined by law."

Three points should be explained here:

1. People's courts exist in three levels.
2. Because the size of the area, the population, and the socio-economic conditions in the mixed minority nationality areas vary one from the other, the regulations set forth a general principle that the people's court in such an area shall be set up according to existing conditions on a level with that of the local government.
3. By special courts is meant courts set up for specific purposes and assigned specific functions, such as military courts, courts formed during the course of land reform, and courts that may be set up in the future for special purposes.

E. Levels of Court Jurisdiction

As indicated in the regulations, the system of people's courts consists basically of the three-grade and two-trial system, one for original jurisdiction and one for appeal. The majority of the cases are to be ended with the second trial, but some cases under unusual circumstances may be ended with a third trial or with the first trial. Such a provision protects the people's right to appeal and at the same time facilitates the effective punishment of counterrevolutionary activity, thereby preventing the loss of money and energy by the plaintiff and by society as a whole that may occur as a consequence of the trickery of counterrevolutionary offenders. In fact, such a provision is formulated in accordance with the actual conditions of the nation. Since China is an extensive region where communications have not been developed, and since the number of cases is so great, a system of three courts and three trials would only result in delays in settlement and hinder the productive efforts of the people. Thus the system of two trials is more realistic and is in the interest of the people. On the other hand, if people bring their cases, either as appeals or as original cases, to the higher court, the higher court should make the necessary decisions according to law.

F. Provisions for Trial

To facilitate a just trial, the provincial court and the Supreme People's Court shall conduct trials in controversial cases with three judges. However, the provincial people's court may, according to the actual circumstances and nature of cases involved, conduct trials with a single judge.

In addition, the regulations provide for the establishment of civil and criminal affair departments and, wherever necessary, for the establishment of a trial committee.

G. Basic Characteristics of the Court System

1. People's Jury

The new people's jury system which invites the people to take part in trials differs from that in capitalistic countries but is basically the same as the Soviet system. It is designed to bring the people to participate in trials. However, because of numerous unsettled cases in the people's courts in various areas, conditions have not permitted the practice of such a jury system throughout the whole country. Therefore, Article 6 gives only a general statement of the principle that "the people's courts shall put into operation the people's jury system with due consideration for the nature of the case in question."

- 5 -

CONFIDENTIAL

CONFIDENTIAL

50X1-HUM

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2. Field Investigation, Field Trial, and Transfer of Jurisdiction

Such a system is instituted in the service of the people and conducted in the people's way. It is efficient because it saves money and the labor of the people involved. Furthermore, by means of such a system of trial, people will more clearly understand the government's policy and thus observe the law. It enables the people's court to obtain evidence more easily and to conduct trials more efficiently. It also enables the people's court to observe the reaction of the people to court decisions.

An example is the case of Shen Yen-hsi, who was tried in Cheng-chou on the charge that he had withheld enemy property from surrender to the government. At the beginning of the case he was tried in the courtroom of the court of jurisdiction, but the trial produced no result. Only after the court undertook field investigation, gathering information from the people, and held the trial in the locality in which the case arose, did the court solve the case. By means of field investigation and trial, the court not only solved the case but also uncovered concealed enemy property that had not been included in the case in question. Such a system is specifically mentioned in the regulations because it can apply not only to cases that occur in small and remote villages, but also to some of the cases that occur in cities.

3. Public Trial

The purpose of public trial is to provide sufficient opportunity not only for the witness to speak on his own behalf but also for the audience to express its opinion, on the condition that the rules of the court are observed.

What cases should not be tried in public? Examples of such cases are those involving state secrets, or those which, when they are made public, will have undesirable effects on society. In general, criminal and civil cases and cases concerning counterrevolutionary activities that need not be kept secret, should be given public trials. Public trial serves as a political education for the witness, as well as for the public.

4. Propaganda and Educational Values of Court Trial

The process of trial is an education in itself. By means of trials of criminal and civil cases, court settlements, and legal penalties, the people's courts wield a positive educational influence on the people.

People's courts on the various levels should continue the salutary practice of maintaining close contact with the people and instructing them. In fact, the people's courts have gone beyond the confines of the courtroom and, in conducting field investigations and trials, they have entered the villages and the mining and industrial areas to get in close contact with the people. The people's court has become the lecture room from which our program, laws, and regulations are being taught and propagated to the people of the nation. In addition, various means of propaganda, such as broadcasts, news reports, bulletin boards, street plays, exhibits, discussion groups, and speech clubs are being used to teach the people the meaning of laws, the importance of observing those laws, and the causes and remedies of crimes. In view of the educational value of court actions, the educational functions of the court are being mentioned in the regulations.

This is a brief explanation of the Provisional Regulations Governing the Organization of People's Courts of the People's Republic of China. We appeal to you for advice.

- E N D -

- 6 -

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